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The Arizona Corporation Commission
Solar Alliance

TO: Arizona Corporation Commission

FROM: The Solar Alliance

DATE: 06-08-09

DOCKET NO. E-01345A-09-0263

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RE: IN THE MATTER OF ARIZONA PUBLIC SERVICE COMPANY'S REQUEST FOR AUTHORIZATION FOR INCREASE IN RECOVERY GUARANTEE FOR PRODUCTION BASED INCENTIVES FOR DISTRIBUTED RENEWABLE GENERATION PROJECTS.

The Solar Alliance appreciates this chance to address the Arizona Corporation Commission (Commission) with regard to Arizona Public Service Corporation (APS Docket No. E-01345A-09-0263)

On September 18th 2008 the Solar Alliance filed statements in the APS 2009 Renewable Energy Standard Implementation plan docket (E-01345A-08-0331) expressing concerns related to a change in law provision included as part of the contract language for APS' Performance Based Incentives (PBI). The Renewable Energy Standard and Tariff (REST) authorizes participating utilities to recover costs associated with PBI payments through the environmental surcharge. The point of concern for the utilities is that if a party enters into a PBI contract, which can last five, ten or fifteen years, then the PBI payments are also spread out over the length of the contract. Accordingly, the utilities need to be able to recover costs through the environmental surcharge for the length of the contract. With this concern in mind APS included a change in law provision in its PBI contract that would essentially allow APS to cease payment of performance based incentives to the owner of a solar system if future rule changes negatively affected APS' ability to recoup costs associated with the non-residential distributed generation portion of the REST program. This provision essentially shifted the risk of future rule changes from the utility to the owner of the renewable energy system. Some Alliance member companies found that this provision seriously and negatively affected their ability to achieve financing for PBI solar projects.

It is important to note that REST rules fully authorize utilities participating in the REST to recoup costs associated with the PBI payments, and the change in law provision only comes into play if future policy decisions change cost recovery abilities.

This issue is a problem not uncommon to policy makers. Often, industry is asked to make long term investments based on a policy landscape that could shift dramatically over time. In many cases policy makers are sympathetic to such situations and work to try and include provisions that would exclude grandfathered contracts from policy changes that could render a portion of the contract void or unworkable.

When the Alliance submitted its September 18th filing and brought this issue to light, APS and Commission Staff responded, proactively working with stakeholders to find a solution to this issue. APS proposed what the Alliance members believed at the time to be a workable compromise. Decision No. 70654 included cost recovery for all PBI contracts, up to a maximum of \$77 million over the lifetime of the contract, even if the REST rules and the associated environmental surcharges changed.

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Currently, as part of Docket E-01645A-09-0263, APS is seeking raise this cap from \$77 million to \$220 million.

With regard to the current request to raise the cost recovery cap, the Alliance appreciates the APS's concerns and does not oppose the application. However, there is an issue with the basic idea of having a cap at all. The Alliance contends that the superior policy choice would be for the Commission to approve a provision that guarantees cost recovery for all PBI contracts that participating utilities enter into. A cap is unnecessary, and because it is confusing, worse than redundant. The REST cost recovery that the Commission approves every year, which authorizes the amount of funding that each of the participating utilities can collect for renewable incentives through the environmental surcharge serves as a natural and firm cap. When the commission approved the initial \$77 million cost recovery cap an inconsistent message was sent as a result of the authorized cost recovery being different than the cost to incent REST compliant PBI contracts.

The utilities have been tasked with meeting yearly, non-residential distributed generation renewables development goals which are primarily incentivized through PBIs. The mechanism for meeting these development goals are outlined in the yearly REST implementation plans which:

1. Authorize the \$ per kWh of production that can be offered as a performance incentive
2. Approve a yearly budget that includes the costs of PBI payments for new contracts as well as payments for contracts entered into in previous year.

Arguably, this constitutes a de facto approval of utility PBI contracts and the associated cost recovery. It is likely that any forward looking and artificially set cost recovery cap will be well below or above the amount of funding necessary for the utility to continue PBI payments need to meet REST goals. Such a situation will lead to confusion as well as yearly debate.

A better choice would be for the cost recovery assurance to be provided for all REST compliant PBI contracts.

We look forward to working with Commission Staff and APS to provide any information that might be required.

Respectfully submitted on behalf of the Solar Alliance,

Tom Alston

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